



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Harry Freitas

**SUBJECT:** SEE BELOW

**DATE:** February 4, 2015

**COUNCIL DISTRICT: 4**

## SUPPLEMENTAL

**SUBJECT: File No. PD14-014. Appeal of the Planning Director's decision to approve a Planned Development Permit to effectuate the Planned Development Zoning District (File No. PDC07-071) and allow a vertical expansion to an existing landfill, with no additional construction, on a 352 gross acre site.**

## REASON FOR SUPPLEMENTAL

On December 10, 2014, the Planning Commission held a public hearing on the subject appeal of a Planned Development Permit. After the public hearing was closed, the Planning Commission voted 5-0-2 (Commissioners Bit-Badal and Yob recused) to continue the item to the January 28, 2015 Planning Commission to provide time for Commissioner Pham to review the Environmental Impact Report (EIR) associated with the project. The project was further continued at the January 28, 2015 Planning Commission hearing to the February 11, 2015 Planning Commission hearing.

Since this time, staff further coordinated with the City's Local Enforcement Agency (LEA) and obtained copies of Newby Island's existing Solid Waste Facility Permit with CalRecycle, as well as their proposed Revised Solid Waste Facility Permit and an associated Permitting & Assistance Branch Staff Report (attached). The Staff Report discussed Newby Island's recent compliance history, environmental analysis, and recent public comments made to CalRecycle.

There were two recent violations issued by the LEA, both of which have been corrected. The Bay Area Air Quality Management District (BAAQMD) has also identified three violations at the landfill and two violations at the Recyclery, all of which are still under investigation. Based on coordination with the LEA and BAAQMD, staff is recommending the addition of the following permit conditions, which are intended to strengthen the already proposed permit conditions and approved Mitigation, Monitoring, and Reporting Program addressing odor issues.

- **Recyclery Storage.** No outdoor storage of putrescible materials intended for the Recyclery or composting facility is permitted at the Newby Island Sanitary Landfill.
- **Landfill Cover.** All cover placed on the landfill during end of day operations shall remain in place and not be uncovered at any time. Only approved daily cover waste materials, consistent with the site's Solid Waste Facility Permit, may be used.

Also attached is a letter from the applicant's counsel dated January 26, 2015 requesting further continuance of the hearing to the March 11, 2015 Planning Commission to allow a new Commissioner to be seated.

*SNWIA ID*

*for*

HARRY FREITAS, DIRECTOR  
Planning, Building, and Code Enforcement

Attachments: Current CalRecycle Solid Waste Facilities Permit  
Proposed CalRecycle Solid Waste Facilities Permit  
Permitting & Assistance Branch Staff Report (January 30, 2015)  
Letter from Applicant (January 26, 2015)

Website Links: Planning Commission Staff Report (December 10, 2014)

<http://www.sanjoseca.gov/DocumentCenter/View/38008>

Newby Island Sanitary Landfill / The Recyclery Planned Development  
Rezoning Final EIR (Resolution No. 76392)

<http://www.sanjoseca.gov/index.aspx?NID=2435>

Additional public correspondence received after December 10, 2014

<http://www.sanjoseca.gov/DocumentCenter/View/39918>

# SOLID WASTE FACILITY PERMIT

1. Facility/Permit Number:

43-AN-0003

2. Name and Street Address of Facility:

Newby Island Sanitary Landfill

1601 Dixon Landing Road

San Jose, CA 95035

\*Facility is located in San Jose, however the mailing address is in Milpitas

3. Name and Mailing Address of Operator:

International Disposal Corporation, Inc.

1601 Dixon Landing Road

Milpitas, CA 95035

4. Name and Mailing Address of Owner:

International Disposal Corporation

1601 Dixon Landing Road

Milpitas, CA 95035

5. Specifications:

a. Permitted Operations:

☐ Composting Facility  
(mixed wastes)

☐ Processing Facility

☐ Composting Facility  
(yard waste)

☐ Transfer Station

☒ Landfill Disposal Site

☐ Transformation Facility

☐ Material Recovery Facility

☒ Other: Compost Bagging and Waste Tire Storage

b. Permitted Hours of Operation:

Commercial and Industrial Disposal Operations: 24 Hours per day, 6 days per week (Closed Sunday)

Public Disposal Operations: 8:00 am to 4:00pm, 6 days per week (Closed on Sunday)

c. Permitted Tons per Operating Day:

.....4000\*.....Total: Tons/Day

Non-Hazardous - General

.....4000.....Tons/Day

Non-Hazardous - Sludge

.....N/A.....Tons/Day

Non-Hazardous - Separated or comingled recyclables.....N/A.....Tons/Day

Non-Hazardous - Other (See Section 14 of Permit)

.....N/A.....Tons/Day

Designated (See Section 14 of Permit)

.....N/A.....Tons/Day

Hazardous (See Section 14 of Permit)

.....N/A.....Tons/Day

d. Permitted Traffic Volume:

.....Equivalent of 4000\*.....Total: Vehicles/Day

Incoming waste materials

.....N/A.....Vehicles/Day

Outgoing waste materials (for disposal)

.....Vehicles/Day

Outgoing materials from material recovery operations.....N/A.....Vehicles/Day

e. Key Design Parameters (Detailed parameters are shown on site plans bearing LEA and CIWMB validations):

	Total	Disposal	Transfer	MRF	Composting	Transformation
Permitted Area (in acres)	342 a	308 a	N/A a	N/A a	6 a	N/A a
Design Capacity		50.8 Million cy	N/A tpd	N/A tpd	N/A tpd	N/A tpd
Max. Elevation (Ft. MSL)		150 ft				
Max. Depth (Ft. BGS)		40 ft				
Estimated Closure Date		2025 Estimate Only				

Upon a significant change in design or operation from that described herein, this permit is subject to revocation or suspension. The stipulated permit findings and conditions are integral parts of this permit & supersede the conditions of any previously issued permit.

6. Approval:

Approving Officer Signature

Name/Title: Michael Hannon, Deputy Director, Code Enforcement

7. Enforcement Agency Name and Address:

City of San Jose

Planning, Building and Code Enforcement

170 W. San Carlos St.

San Jose, CA 95113

8. Received by CIWMB:

January 24, 1997

9. CIWMB Concurrence Date:

February 26, 1997

10. Permit Issued Date:

March 14, 1997

11A. Next Permit Review Due Date:

November 15, 2011

11B. Permit Transfer Date:

N/A

11C. Permit Review Date:

November 15, 2006





# SOLID WASTE FACILITY PERMIT - Pg. 1 of 5

1. Facility/Permit Number:

SWIS No. 43-AN-0003

2. Name and Street Address of Facility:

Newby Island Sanitary Landfill  
1601 Dixon Landing Road  
San Jose, CA 95035

3. Name and Mailing Address of Operator:

International Disposal Corporation, Inc.  
1601 Dixon Landing Road  
Milpitas CA 95035

4. Name and Mailing Address of Owner:

International Disposal Corporation, Inc.  
1601 Dixon Landing Road  
Milpitas CA 95035

NOTE: The Facility is located in San Jose, however  
the mailing address is in Milpitas.

5. Specifications:

a. Permitted Operations:

☐

Composting Facility  
(mixed wastes)

☐ Processing Facility☐

Composting Facility  
(yard waste)

☐ Transfer Station☒

Landfill Disposal Site

☐ Transformation Facility☐

Material Recovery Facility

☒ Other: Compost Bagging Operation and Waste Tire Storage

b. Permitted Hours of Operation:

Commercial and Industrial Disposal Operations

24 Hours per Day, 6 Days per Week (CLOSED ON SUNDAY)

Public Disposal Operations

8:00am to 4:00 pm, 7 Days per Week (CLOSED ON SUNDAY)

c. Permitted Tons per Operating Day:

The Annual Average Tonnage allowed is 3260 TPD (See Conditions #C4).

Total: 4000\* Tons/Day

\* Maximum Peak Daily Tonnage (See Conditions #C4).

Non-Hazardous - General

Non-Hazardous - Sludge

Non-Hazardous - Separated or commingled recyclables

Non-Hazardous - Other (See Section 14 of Permit)

Designated (See Section 14 of Permit)

Hazardous (See Section 14 of Permit)

4000

Tons/Day

N/A

Tons/Day

N/A

Tons/Day

N/A

Tons/Day

N/A

Tons/Day

N/A

Tons/Day

d. Permitted Traffic Volume:

Total: Equivalent of 4000\* Tons per Day Vehicles/Day

Incoming waste materials

N/A

Vehicles/Day

Outgoing waste materials (for disposal)

N/A

Vehicles/Day

Outgoing materials from material recovery operations

N/A

Vehicles/Day

e. Key Design Parameters (Detailed parameters are shown on site plans bearing LEA and CIWMB validations):

	Total	Disposal	Transfer	MRF	Composting**	Transformation
Permitted Area (in acres)	342 Acres	313 Acres	N/A		6 Acres	N/A
Design Capacity		50.8 Million Cubic Yards	N/A		N/A	N/A
Max. Elevation (Ft. M.S.L.)		150 ft				
Max. Depth (Ft. below M.S.L.)		40 ft				
Estimated Closure Date		2020 Estimate Only				

(\* Composting Operations are authorized by a separate Solid Waste Facility Permit 43-AN-0017.)

The permit is granted to the operator named above. Upon a change of owner or operator, the LEA shall be notified 45 days in advance so that the LEA may make a determination for a modification or revision to the permit. The attached permit findings and conditions are integral parts of this permit and supersede the conditions of any previous issued solid waste facility permits.

6. Approval:

Approving Officer Signature

James R. Derryberry

Name/Title

James R. Derryberry, Director

7. Enforcement Agency Name and Address:

City of San Jose  
Department of Planning, Building and Code  
Enforcement  
777 N. First St. Suite 700  
San Jose, CA 95112

8. Received by CIWMB:

JAN 24 1997

9. CIWMB Concurrence Date: FEB 26 1997

10. Permit Review Due Date:

March 14, 2002

11. Permit Issued Date:

March 14, 1997





# SOLID WASTE FACILITY PERMIT - Pg. 2 of 3

Facility/Permit Number:

SWIS No. 43-AN-0003

12. Legal Description of Facility (refer to attached Site Vicinity and Site Location Maps, as shown in the RDSI Figures 1,2,3) Located at the Western terminus of Dixon Landing Road, in Section 35 of Township 5 S, Range 1 W, Mount Diablo Base and Meridian (APN 015-40-002 and 015-31-024). The site latitude and Longitude are approximately 37 degrees 30 minutes North and 121 degrees 54 minutes West, City of San Jose, Santa Clara County (SEE ATTACHMENT A Legal Site Description.).

## 13. Findings:

- This permit is consistent with the County Solid Waste Management Plan or the County-wide Integrated Solid Waste Management Plan (CoiWMP). Public Resources Code, Section 50001. The CoiWMP, dated November 1995, was adopted by the C.I.W.M.B. in July 1996 (See attachment B:)
- This permit is consistent with standards adopted by the California Integrated Waste Management Board (CIWMB). Public Resources Code, Section 14010.
- The design and operation of the facility is in compliance with the State Minimum Standards for Solid Waste Handling and Disposal as determined by the LEA (The City of San Jose Local Enforcement Agency) during the inspections of - December 23, 1996.
- The following local fire protection district has determined that the facility is in conformance with applicable fire standards as required in Public Resources Code, Section 44151. (See Attachment C: Fire District Compliance.) San Jose Fire Dept. Approval date May 9, 1996.
- An environmental determination (i.e. Notice of Determination) was filed with the State Clearinghouse( SCH = 95063028) to identify current and proposed changes, pursuant to Public Resources Code, Section 21081.6. The environmental documents were filed by the City of San Jose Planning Department and adopted on July 21, 1995. ( See attachment D: Environmental Determination.)
- A County-wide Integrated Waste Management Plan has been approved by the CIWMB.
- The following authorized agent has made a determination that the facility is consistent with, and designated in, the applicable general plan: The City of San Jose Department of Planning. ( See Attachment E: General Plan Conformance Finding ) Public Resources Code, Section 50000.5(a).
- The following local governing body has made a written finding that surrounding land use is compatible with the facility operation, as required in Public Resources Code, Section 50000.5(b): The City of San Jose Planning Department. (See Attachment E: General Plan Conformance Finding).

## 14. Prohibitions:

The permittee is prohibited from accepting any liquid waste sludge, designated wastes, friable asbestos, or hazardous waste unless such waste is specifically listed below, and unless the acceptance of such waste is authorized by all applicable agencies. Wastes requiring special handling, other than those defined in the RDSI, shall require LEA approval for authorization of special handling methods. All non-solid wastes containing less than 50 percent solids must be handled and disposed of as described in a waste management plan approved by the Regional Water Quality Control Board (RWQCB) and the Local Enforcement Agency (LEA).

EXCEPTIONS: A. Non-Liquid water treatment residue such as solids from screens and settling tanks, and sludge containing at least 15%-20% solids.

B. Non-liquid sewage treatment residue such as solids from screens and grit chambers, and sludge containing at least 15%-20% solids.

C. Wastes containing less than 50% solids, which have been approved by the LEA and the RWQCB.

D. Triple Rinsed containers in accordance with Title 22, CCR, Section 66261.7

E. Manure

F. Dead Animals or portions thereof

G. Ashes from household burning

H. Non Hazardous Solid Waste as defined in CCR Title 23, Chapter 15, Section 2523 that are not prohibited in other portions of this permit or in the WDR's.

I. Contaminated Soils and other Industrial Wastes are permitted with prior approval by the LEA and the RWQCB and in compliance with All other regulatory requirements.

The permittee is additionally conditioned by the following items:

- Untreated medical waste, as defined in Chapter 6.1, Division 20 of the Health and Safety Code, is prohibited.

15. The following documents also describe and/or restrict the operation of this facility (insert document date in space):

	DATE
[x] Report of Disposal Site Information	<u>7-28-96</u>
[x] Land Use Permits and Conditional Use Permits: SCP #90-10-008 H95-03-022	<u>7-02-91 and</u> <u>7-17-95</u>
[x] Air Pollution Permits and Variances: Permit #11093 to operate Plant 9013	<u>7-19-95</u>
[x] EIR or Negative Declaration: H95-03-022	<u>7-17-95</u>
[x] Lease Agreements - owner and operator	<u>12-16-83</u>
[x] Preliminary Closure/Post Closure Plan	<u>3-13-94</u>
[x] Closure Financial Responsibility Document	<u>2-15-90</u>
[x] Updated Waste Discharge Requirements Order No. 87-152 and 94-025	<u>11-30-87 and 3-15-94</u>

# SOLID WASTE FACILITY PERMIT - Pg. 3 of 5

Facility/Permit Number:

SWIS No. 43-AN-0003

## 16. Self Monitoring:

- a. Results of all self-monitoring programs will be reported as follows:  
(The monitoring documentation, where applicable, will be delinquent 30 days after the end of the reporting period)

Program	Reporting Facility	Agency Reported To
b. Operator shall notify the LEA upon receipt of a Notice of Violation from any regulatory agency. In addition, the operator shall notify the LEA within 72 hours, or on the next business day, following written receipt of a Notice of Violation or upon receipt of written notification of complaints regarding the facility which have been received by other agencies.	As noted	LEA
c. All complaints regarding this facility and the operator's actions taken to resolve these complaints shall be entered into the log of special occurrences. (Notification to the LEA within one day following any serious or major complaint is still recommended.)	As noted	LEA
d. Reports of all special/unusual occurrences and the operator's actions taken to correct these problems shall also be entered into the Log of Special Occurrences.	As noted	LEA
e. The quantities and types of hazardous wastes, untreated medical wastes, or otherwise prohibited wastes found in the waste stream and the disposition of these materials.	ANNUAL (Due Jan. 30)	LEA
f. All incidents of unlawful disposal of prohibited materials and the operator's actions taken shall be entered into the log of special occurrences. Indicate those incidents which occurred as a result of the random load checking program. Incidents, as used here, means that the hauler or producer of the prohibited waste is known.	As noted	LEA
g. The operator shall maintain on-site records for the LEA to document the daily gross Tonnage along with the monthly totals. Also, copies of these monthly totals shall be mailed to the LEA within 30 days after the end of the month. The operator shall maintain these records on the facility's premises for a minimum of one year and make them available to any Enforcement Agency's personnel on request.	As noted	LEA
h. The operator shall report to the LEA in writing the average annual Tonnage figure at the end of the calendar year.	ANNUAL (Due Jan. 30)	LEA
i. The results of the landfill perimeter gas monitoring.	As required by regulation.	LEA
j. The results of the leachate monitoring, collection, treatment and disposal program. The operator shall monitor leachate generation as required by the WDR's. The operator will collect, treat and effectively dispose of the leachate in a manner approved by the CRWQCB, with the results, reports and other documentation being copied to the LEA.	As required by WDR's	LEA
k. One topographical map showing all current fill locations, and one showing all excavations from the previous calendar year. Maps shall be on white bond with a scale no smaller than one inch = 200 feet unless otherwise approved by LEA.	<u>Annually</u> (Due April 1)	LEA
l. Black and White Stereo Pair copies of Aerial Photos will be provided to the LEA.	Same as above	LEA
m. The Operator shall make available to the LEA the gate Receipt Records with vehicle count and arrival times when it is necessary for the LEA to review them onsite.	As requested	



# SOLID WASTE FACILITY PERMIT - Pg. 4 of 5

Facility/Permit Number:

SWIS NO. 43-AN-0003

## 17. LEA Conditions:

### A. Requirements :

1. This facility shall comply with all the State Standards for Solid Waste Handling and Disposal.
2. This facility shall comply with all federal, state, and local requirements and enactments including all mitigation measures given in any certified Environmental document filed pursuant to the Public Resources Code, Section 21031.6.
3. The operator shall comply with all notices and orders issued by any responsible agency designated by the Lead Agency to monitor the mitigation Measures contained in any of the documents referenced within this permit pursuant to the Public Resources Code section 21081.6.
4. Additional information concerning the Design and operation of this facility shall be furnished on request to the Enforcement Agency personnel.
5. The operator shall maintain a copy of this permit at the facility so as to be available at all times to facility personnel and to Enforcement Agency Personnel.
6. The operator shall install and maintain signs at the entrance indicating that no hazardous waste or liquid wastes are accepted.
7. The operator shall comply with the Waste Load Checking Program as described in Section 6.12 and Appendix E of the Report of Disposal Site Information document dated June 28, 1996.
8. The operator shall comply with all conditions and requirements contained in the WDR's (Order No. 94-025).

### B. Provisions :

1. Operational controls shall be established to preclude the receipt and disposal of volatile organic chemicals or other types of prohibited wastes. The Operator shall comply with the approved Waste Load Checking Program as described in the RDSI dated June 28, 1996. Any changes in this program Must be approved by the LEA prior to implementation. The following SWFP conditions supplement those conditions:
  - A. The minimum number of random waste loads to be inspected monthly at this landfill is five (5).
  - B. The number of random incoming loads to be inspected each month is determined by the LEA and shall be related to the permitted daily volume of Refuse received by the facility. The LEA reserves the right to increase the required number of incoming waste load inspections for sufficient cause.
  - C. Incidents of unlawful disposal of prohibited materials shall be reported to the LEA as described in the monitoring section of this permit. In Addition, all other agencies as required by regulation shall also be notified of any such incidents in accordance with established time frames.
2. This facility must comply with all monitoring requirements established in the Regional Water Quality Control Board Order No. 94-025, Waste Discharge Requirements.
3. This permit is subject to review by the LEA and may be suspended, revoked or modified at any time by the LEA for sufficient cause.
4. The LEA reserves the right to suspend or modify waste receiving operations when deemed necessary due to an emergency, a potential health hazard or the creation of a public nuisance.
5. The operator shall maintain a log of special occurrences as required by CCR Title 14 and 27 and shall make available to the LEA any BAAQMD or OSHA related reportable documentation. This log shall include, but is not necessarily limited to:

Surface and underground fires, explosions, earthquakes, slope failures, discharge of hazardous liquids or gases to the ground, water or air, or significant injuries requiring hospital care. Entries made in this log and deemed significant by the operator must be reported to the LEA within 72 hours. Each of these log entries shall be accompanied by a summary of any actions taken by the operator to mitigate the occurrence.
6. The operator shall maintain, at the facility, accurate daily records of the weight and/or volume of refuse received. These records shall be available To both LEA and CIWMB personnel and shall be maintained for a period of at least one year.

### C. Specifications :

1. The operator shall notify the LEA in writing, of any proposed significant changes in the facility design or operations during the planning stages. In no case shall the operator undertake any changes unless the operator first submits to the LEA a notice of said changes at least 120 days before said changes are undertaken. Any significant change as determined by the LEA would require a revision of this permit.
2. Upon a change in the owner or operator, the LEA shall be notified 45 days prior to the change so that the LEA may make a determination to either modify or revise the permit.
3. This permit supersedes all previous SWFP's for this site.
4. This facility is allowed a peak or maximum daily tonnage of 4000 TPD for disposal purposes. The site is allowed an annual average of 3260 TPD, and is also allowed to take in up to 100,000 tons per year of inertis (concrete, asphalt, rock, greenwaste and soil) for road and pad building and other site improvements. The weight of these materials shall be deducted from the incoming waste totals, and will not be counted towards the permitted tonnage totals.

# SOLID WASTE FACILITY PERMIT - Pg. 5 of 5

Facility/Permit Number:

SWIS NO. 43-AN-0003

## 17. LEA Conditions (continued)

### C. Specifications (continued)

5. Because this site is a 24 hour site with continuous disposal operations for 24 hours a day, the active disposal face is in a continuous disposal mode. For this reason, the operating day for this site will be defined as a six day period. During this period, the exterior sloping face of the active cell shall be covered with daily Cover. At the end of the six day period, the active face and exterior slope face of the cell will be covered fully with daily cover after the last load of waste is placed after 4:00 p.m. From day 1 to day 6, only those areas that are continuously receiving waste can remain without cover. Also, from day 1 to day 6, where waste has not been received for more than 3 hours, the entire active face will be covered. The operator may be directed to cover more frequently, if required by the LEA, in the event of a public health issue or a public nuisance.
6. The various types of ADC approved for this site, such as Biosolids, may be amended by the LEA and/or other Agency authorizations.
7. Upon successful completion of an approved ADC pilot project and upon administrative concurrence by the LEA, CIWMB, and the RWQCB the Operator may commence ongoing non-experimental ADC use.
8. This facility must comply with all applicable Federal, State and local enactments, laws and regulations, including the State Minimum Standards established by the C.I.W.M.B. in State CCR's Title 14, and administered locally by the Local Enforcement Agency. The Local Enforcement Agency is the City of San Jose, Department of Planning, Building and Code Enforcement.

# SOLID WASTE FACILITY PERMIT

Facility Number:

**43-AN-0003**

**1. Name and Street Address of Facility:**

Newby Island Sanitary Landfill  
1601 Dixon Landing Road  
San Jose, CA 95035

**2. Name and Mailing Address of Operator:**

International Disposal Corporation, Inc.  
1601 Dixon Landing Road  
Milpitas, CA 95035

**3. Name and Mailing Address of Owner:**

International Disposal Corporation, Inc.  
1601 Dixon Landing Road  
Milpitas, CA 95035

**4. Specifications:**

**a. Permitted Operations:**

☒ Solid Waste Disposal Site

☐ Transformation Facility

☐ Transfer/Processing Facility (MRF)

☐ Composting Facility

**b. Permitted Hours of Operation:**

**Commercial and Industrial Disposal Operations:** 24 hours per day, 6 days per week (CLOSED ON SUNDAYS)

**Public Disposal Operations:** 3:00 am to 5:00 pm, Monday through Friday and 4:00 am to 4:00 pm on Saturday (CLOSED ON SUNDAYS)

**c. Permitted Maximum Tonnage:**

4,000 tpd maximum limit of disposed waste.

**d. Permitted Traffic Volume:**

1,269 waste vehicles per day (does not include employees, visitors, vendors, regulatory personnel).

**e. Key Design Parameters (Detailed parameters are shown on site plans within the applicable LEA approved JTD:**

	Total	Disposal
Permitted Area (in acres)	342 acres	298 acres
Design Capacity		57.5 Million cy
Max. Elevation (Ft. MSL)		245 ft
Max. Depth (Ft. BGS)		40 ft
Estimated Closure Date		2041

Upon a significant change in design or operation from that described herein, this permit is subject to revocation or suspension. The attached permit findings and conditions are integral parts of this permit and supersede the conditions of any previously issued solid waste facility permit.

**5. Approval:**

Approving Officer Signature

Diane Buchanan, Deputy Director, Code Enforcement

**6. Enforcement Agency Name and Address:**

City of San Jose  
Department of Planning, Building and Code Enforcement  
Code Enforcement Division, Local Enforcement Agency  
200 East Santa Clara Street, T4  
San Jose, CA 95113

**7. Date Received by CalRecycle:**

**DEC 09 2014**

**8. CalRecycle Concurrence Date:**

**9. Permit Issued Date:**

**10. Permit Review Due Date:**

**11. Owner/Operator Transfer Date:**



# SOLID WASTE FACILITY PERMIT

Facility Number:

**43-AN-0003**

## 12. Legal Description of Facility:

A legal description of this facility is contained in Section B.1.1 of the Joint Technical Document (JTD). This facility is located at the western terminus of Dixon Landing Road in Section 35 of Township 5 S Range 1 W Mount Diablo Base and Meridian (APN 015-40-003, 015-40-005 and 015-47-001). The site latitude and longitude are approximately 37 degrees 30 minutes North and 121 degrees 54 minutes West. City of San Jose, Santa Clara County. 1601 Dixon Landing Road.

## 13. Findings:

- a. This facility is identified in, and is consistent with the County Solid Waste Management Plan or the Countywide Integrated Solid Waste Management Plan (CoIWMP), pursuant to Public Resources Code Section 50001. The CoIWMP, dated November 1995 was adopted by the Department of Resources Recycling and Recovery (CalRecycle) in July 1996.
- b. This permit is consistent with the standards adopted by CalRecycle, pursuant to PRC 44010.
- c. The design and operation of the facility is consistent with the State Minimum Standards for Solid Waste Handling and Disposal as determined by the enforcement agency, pursuant to PRC 44009.
- d. The City of San Jose Fire Department has determined that the facility is in conformance with applicable fire standards, pursuant to PRC, 44151.
- e. The Newby Island Sanitary Landfill and The Recyclery Rezoning Project Amended Environmental Impact Report State Clearinghouse (SCH) Number 2007122011 was certified by the City of San Jose Planning Commission June 6, 2012). This Amended EIR describes and supports the design and operation which will be authorized by the issuance of this permit.

## 14. Prohibitions:

The permittee is prohibited from receiving untreated medical waste, as defined in Chapter 6.1 Division 20 of the Health and Safety Code. The permittee is prohibited from accepting any liquid waste sludge, designated wastes, friable asbestos or hazardous waste unless such waste is specifically listed below and unless the acceptance of such waste is authorized by all applicable agencies. Wastes requiring special handling, other than those defined in the JTD, shall require LEA approval for authorization of special handling methods. All non-solid wastes containing less than 50 percent solids must be handled and disposed of as described in a waste management plan approved by the Regional Water Quality Control Board (RWQCB) and the Local Enforcement Agency (LEA).

### EXCEPTIONS:

- A. Non-liquid water treatment residue such as solids from screens and settling tanks and sludge containing at least 15%-20% solids
- B. Non-liquid sewage treatment residue such as solids from screens and grit chambers and sludge containing at least 15%-20% solids
- C. Wastes containing less than 50% solids which have been approved by the LEA and the RWQCB
- D. Triple rinsed containers in accordance with Title 22 CCR Section 66261.7
- E. Manure
- F. Dead Animals or portions thereof
- G. Ashes from household burning
- H. Non hazardous solid waste as defined in CCR Title 23 Chapter 15 Section 2523 that are not prohibited in other portions of this permit or in the WDR's.
- I. Contaminated soils and other industrial wastes are permitted with prior approval by the LEA and the RWQCB and in compliance with all other regulatory requirements

## 15. The following documents describe and/or restrict the operation of this facility:

	Date		Date
Joint Technical Document and Subsequent Amendments	January 2014	Santa Clara County, Countywide CoIWMP	July 1996
Environmental Impact Report (EIR) (SCH No. 2007122011)	June 2012	Planned Development Permits PD 14-014	Oct 1, 2014
Waste Discharge Requirements WDR Order No. R2-2005-0020		Preliminary Closure and Postclosure Maintenance Plan	Jan 31, 2014
Closure Financial Assurance Documentation	February 3, 2014		

# SOLID WASTE FACILITY PERMIT

Facility Number:

**43-AN-0003**

## 16. Self Monitoring:

Results of all self-monitoring programs will be reported to the LEA as follows:

(The monitoring documentation, where applicable, will be delinquent 30 days after the end of the reporting period)

Program	Submittal Method and Frequency
a. Operator shall notify the LEA upon receipt of a Notice of Violation from any regulatory agency. In addition, the operator shall notify the LEA within 72 hours or on the next business day, following written receipt of a Notice of Violation or upon receipt of written notification of complaints regarding the facility which have been received by other agencies.	As noted
b. All complaints regarding this facility and the operator's actions taken to resolve these complaints shall be entered into the log of special occurrences. (Notification to the LEA within one day following any serious or major complaint is still recommended.)	As Noted
c. Reports of all special/unusual occurrences and the operator's actions taken to correct these problems shall also be entered into the Log of Special Occurrences.	As Noted On site for review
d. The quantities and types of hazardous wastes, untreated medical wastes, or otherwise prohibited wastes found in the waste stream and the disposition of these materials.	ANNUAL (Due Jan. 30)
e. All incidents of unlawful disposal of prohibited materials and the operator's actions taken shall be entered into the log of special occurrences. Indicate those incidents which occurred as a result of the random load checking program. Incidents, as used here, means that the hauler or producer of the prohibited waste is known.	As Noted
f. The operator shall maintain on-site records for the LEA to document the daily gross tonnage along with monthly totals. Also, copies of these monthly totals shall be provided to the LEA within 30 days after the end of the month. The operator shall maintain these records on the facility's premises for a minimum of one year and make them available to any Enforcement Agency's personnel on request.	As Noted
g. The operator shall report to the LEA in writing the average annual tonnage figure at the end of the calendar year.	ANNUAL (Due Jan. 30)
h. The results of the landfill perimeter gas monitoring	Quarterly
i. The results of the leachate monitoring, collection, treatment and disposal program. The operator shall monitor leachate generation as required by the WDR's. The operator will collect, treat and effectively dispose of the leachate in a manner approved by the CRWQCB, with the results, reports and other documentation being copied to the LEA.	As required by WDR's
j. One topographical map showing all current fill locations and one showing all excavations from the previous calendar year. Maps shall have a scale no smaller than one inch = 200 feet unless otherwise approved by LEA.	ANNUAL (Due April 1)
k. Aerial Photos will be provided to the LEA.	Same as above
l. The operator shall make available to the LEA the gate Receipt Records with vehicle count and arrival times when it is necessary for the LEA to review them onsite.	As requested

# SOLID WASTE FACILITY PERMIT

Facility Number:

43-AN-0003

## 17. LEA Permit Conditions:

### A. Requirements:

1. The operator shall comply with all State Minimum Standards for solid waste handling and disposal as specified in Title 27, California Code of Regulations.
2. This facility shall comply with all requirements in a mitigation monitoring and reporting program adopted pursuant to Public Resources Code Section 21081.6 that are within the jurisdiction of the LEA to enforce. Additional information concerning the design and operation of this facility shall be furnished on request to the Enforcement Agency personnel.
3. The Operator shall maintain at the facility copies of the LEA approved Joint Technical Document (JTD) and this permit for review so as to be available at all times to facility personnel and Local Enforcement Agency personnel.
4. The operator shall install and maintain signs at the entrance indicating that no hazardous waste or liquid wastes are accepted.
5. The operator shall comply with the Waste Load Checking Program as described in Section B.6.4.1 and Appendix G of the Joint Technical Document dated January 2014 (or any subsequent updates).

### B. Provisions

1. The operator shall comply with the approved Waste Load Checking Program as described in the JTD dated January 2014 (and any subsequent updates). Any changes in this program must be approved by the LEA prior to implementation. The following SWFP conditions supplement those conditions:
  - a. The minimum number of random waste loads to be inspected monthly at this landfill is five (5).
  - b. The number of random incoming loads to be inspected each month is determined by the LEA and shall be related to the permitted daily volume of refuse received by the facility. The LEA reserves the right to increase the required number of incoming waste load inspections for sufficient cause.
  - c. Incidents of unlawful disposal of prohibited materials shall be reported to the LEA as described in the monitoring section of this permit. In addition, all other agencies as required by regulation shall be notified of any such incidents in accordance with established time frames.
2. The permit is subject to review by the LEA and may be temporarily suspended or revoked at any time by the LEA for sufficient cause, in accordance with Division 30 of Public Resources Code, Part 4, Chapter 4, Article 2, Sections 44305 et seq. and associated regulations.
3. The LEA reserves the right to suspend or modify waste receiving operations when deemed necessary due to an emergency, a potential health hazard or the creation of a public nuisance.
4. The operator shall maintain a log of special occurrences as required by CCR Title 14 and 27 and shall make available to the LEA any related reportable documentation. This log shall include, but is not necessarily limited to: surface and underground fires, explosions, earthquakes, slope failures, discharge of hazardous liquids or gases to the ground, water or air or significant injuries requiring hospital care. Entries made in this log and deemed significant by the operator must be reported to the LEA within 72 hours. Each of these log entries shall be accompanied by a summary of any actions taken by the operator to mitigate the occurrence.
5. The operator shall maintain at the facility accurate daily records of the weight and volume of refuse received. These records shall be available to both LEA and CalRecycle personnel and shall be maintained for a period of at least one year.



# SOLID WASTE FACILITY PERMIT

Facility Number:

**43-AN-0003**

## C. Specifications:

1. Any change that would cause the design or operation of the facility not to conform to the terms and conditions of this permit is prohibited. In no case shall the operator implement any change without first submitting a written notice of the proposed change, in the form of a JTD amendment, to the LEA at least 180 days in advance of the change.
2. Prior to a change in the owner or operator, the LEA and CalRecycle shall be notified 45 days in advance of the proposed change, pursuant to Title 27, CCR, Section 21630. The change in owner and operator cannot be finalized until the LEA has made the required findings in Title 27, CCR 21670.
3. This permit supersedes all previous SWFP's for Newby Island Sanitary Landfill.
4. This facility is allowed to receive a maximum of 4,000 tons per day of solid waste for disposal. Waste and materials received and used for cover, approved alternative daily cover, road and pad construction and other site improvements are not part of this tonnage limit. Waste and materials received, processed for recycling are not included in the tonnage limit.
5. The facility is limited to 1,269 vehicles entering the site per day. Employee, visitor, vendor, and regulatory personnel vehicles are not included in this limit. Vehicles delivering waste and materials for use on the site or for processing and recycling are included in this limit. Vehicles entering the site empty but leaving with materials for further processing or recycling or disposal offsite are included in this limit.
6. Only wastes and materials to be used on site or processed for recycling can be stockpiled. The storage times for wastes and materials stockpiled for later use or recycling at the site if not described in the JTD will be set at the discretion of the LEA.
7. The operating day for this site a six day period, Monday through Saturday, as long as there is 24 hour per day disposal activities occurring. Exterior sloping faces of the active cell shall be covered daily. Each Saturday the entire active face as well as exterior sloping faces of the cell will be covered starting no later than 4:00 pm. On any day when waste has not been received for disposal for more than 3 hours the entire active face including and exterior sloping faces will be covered. The operator may be directed to cover more frequently if required by the LEA in the event of a public health concern or a public nuisance.
8. Only approved alternative daily cover wastes materials described in the Joint Technical Document may be used.

**Permitting & Assistance Branch Staff Report**  
Revised Solid Waste Facilities Permit for the  
Newby Island Sanitary Landfill  
SWIS No. 43-AN-0003  
January 30, 2015

**Background Information, Analysis, and Findings:**

This report was developed in response to the City of San Jose, Department of Planning, Building, and Code Enforcement, Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed revised Solid Waste Facilities Permit (SWFP) for the Newby Island Sanitary Landfill (NISL), SWIS No. 43-AN-0003, located in the City of San Jose and owned and operated by International Disposal Corporation, Inc. A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch staff's analysis, findings, and recommendations.

The proposed permit was received on December 9, 2014. Action must be taken on this permit no later than February 7, 2015. If no action is taken by February 7, 2015, the Department will be deemed to have concurred with the issuance of the proposed revised SWFP.

**Proposed Changes**

The following changes to the first page of the permit are being proposed:

	Current Permit (1997)	Proposed Permit
Design Capacity	50.8 Million Cubic Yards	57.5 Million Cubic Yards
Maximum Elevation	150 Feet Above Mean Sea Level	245 Feet Above Mean Sea Level
Estimated Closure Date	2025	2041
Permitted Disposal Area	308 acres	298 acres
Permitted Traffic Volume	Equivalent of 4,000 Tons per Day	1,269 waste vehicles per day (does not include employees, visitors, vendors, regulatory personnel)

Other Changes include:

1. A reformat of the SWFP "Key Design Parameters" table to eliminate solid waste handling activities that are not applicable to this proposed permit.
2. Updates to the "Enforcement Agency Address" to reflect the new address of 200 East Santa Clara Street, T4. San Jose, CA 95113.
3. Updates to section 12 of the SWFP (Legal Description of Facility) to reflect the correct Assessor's Parcel Numbers (APN) 015-40-003, 015-40-005, and 015-47-001.

4. Updates to section 13 of the SWFP (Findings) to identify the applicable Environmental Document prepared for the proposed changes.
5. Updates to section 15 of the SWFP (documents that describe and/or restrict the operation of the facility). Updated documents include; Joint Technical Document (JTD), Environmental Impact Report (EIR), Financial Assurance documentation, and Closure and Postclosure Maintenance Plan.
6. Updated permit conditions correcting outdated language and inclusion of additional conditions and specifications relative to permitted maximum daily tonnage, permitted traffic volume, material storage limits, load checking and waste cover frequency.

### **Key Issues**

The proposed permit will allow for the following:

1. An increase in maximum elevation from 150 feet above mean sea level (AMSL) to 245 feet AMSL.
2. An increase in design capacity from 50.8 million cubic yards to 57.5 million cubic yards.
3. A decrease in permitted disposal area from 308 acres to 298 acres.
4. An extension of the estimated closure date from 2025 to 2041.

### **Background**

The NISL is an existing Solid Waste Disposal Facility situated on a 342 acre site at 1601 Dixon Landing Road, City of San Jose, Santa Clara County. NISL has been used as a landfill since the 1930's and was annexed into the City of San Jose as an operating landfill in 1968. The SWFP, which was issued on March 14, 1997, allows for a maximum receipt of 4,000 tons per day (TPD) of waste disposed and an equivalent of 4,000 TPD maximum traffic volume. Materials that pass through the gate of NISL include waste that is disposed in the landfill; clean soil that is used for cover and for temporary roadways; construction and demolition (C&D) debris that is sorted, recycled, and processed for re-use both on-site and elsewhere; and materials that are used for alternative daily cover (ADC), which include but are not limited to biosolids, processed C&D debris, contaminated soil, green waste, and organic material from the on-site composting operations. In addition to C&D waste, bulky recyclables including appliances, tires, carpet, and cardboard are sent to NISL and either are recycled or diverted for beneficial use. Incoming organics received at the landfill are processed (*i.e.*, ground) and utilized as mulch for erosion control on-site and alternative daily cover or are sent off-site to be used as biofuel, for erosion control, or as a soil additive.

### **Findings:**

Staff recommends concurrence in the issuance of the proposed revised SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the



Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated November 14, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	A Permit Review Report was prepared by the LEA on November 15, 2011. The LEA provided a copy to the Department on December 8, 2014. The changes identified in the review are reflected in this permit revision.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received proposed Solid Waste Facilities Permit on December 9, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on December 8, 2014, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the <i>Countywide Siting Element</i> , as described in their memorandum dated December 23, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(5) Preliminary or Final Closure Plan Consistency with State Minimum Standards	Engineering Support Branch staff in the Closure and Facility Engineering Unit have found the Preliminary Closure/Postclosure Maintenance Plan consistent with State Minimum Standards as described in their memorandum dated May 22, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(6) Known or Reasonably Foreseeable Corrective Action Cost Estimate	Engineering Support Branch staff in the Closure and Facility Engineering Unit have found the written estimate to cover the cost of known or reasonable foreseeable corrective action is approved as described in their memorandum dated April 28, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(A) Financial Assurances	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Financial Assurances for closure, postclosure and corrective action in compliance as described in memorandum dated January 9, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

27 CCR Sections	Findings	
21685(b)(8) Operating Liability Insurance	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Operating Liability in compliance as described in their memorandum dated January 9, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on December 9, 2014. See Compliance History below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on December 8, 2014, that the proposed permit is consistent with and supported by the existing CEQA documentation. See the Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on November 6, 2014. Written comments and oral comments were addressed by LEA staff. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed revised SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

### **Compliance History:**

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on November 25, 2014, and found that the facility was not in compliance with all applicable state minimum standards and permit conditions.

The following violations were issued on the Department focused inspection report dated November 25, 2014:

- Title 27 CCR, section 21600-Report of Disposal Site Information – The facility was storing unprocessed mixed recyclables and organic material from the BFI/Newby Island Recyclery at the compost facility, located within the permitted boundary of the NISL. On the day of the inspection, Department staff observed unprocessed mixed recyclables and organic material stored in a 100'x100'x6' concrete bunker located near the active tipping area of the landfill. This material was not weighed in or tracked for storage at the landfill or compost facility. The current JTD does not describe the transfer and storage of mixed recyclables and organic material inside of a bunker at the NISL.

Additionally, Department staff was informed that the operator harvests cover material [soil and ADC] from the active face and blends and uses ADC materials comprised of ground-up green/wood material, C&D fines, and biosolids. At the time of inspection, Department staff observed a stockpile near the active face of blended ADC comprised of processed green/wood material, biosolids and C&D fines. Also, Department staff observed a small amount of blended ADC applied near the active face from the previous operating day. Department staff did not observe the application of the blended ADC on the day of the inspection. The operator is currently approved to separately use all three materials (green/wood material, C&D fines, and biosolids) as ADC. The current governing JTD for the NISL does not have provisions for harvesting cover material from the active face or the use of the blended materials as ADC. Therefore, these practices shall be discontinued immediately until the LEA approves the activities pursuant to 27 CCR, section 20690.

- Title 27 CCR, section 20510-Disposal Site Records – The facility was storing unprocessed mixed recyclables and organic material from the BFI/Newby Island Recyclery at the compost facility located within the permitted boundary of the NISL. This material was not weighed in or tracked for storage at the landfill or compost facility. All material/tonnage that comes into or leaves the landfill should be properly weighed and tracked by the landfill. The material that was temporarily stored at the landfill was only weighed and tracked through the adjacent BFI/Newby Island Recyclery, which is also owned and operated by Republic Services.

Staff performed a follow-up inspection on December 9, 2014 and found that the violations observed on November 25, 2014, had been corrected. The storage of unprocessed mixed recyclables and organic material from the BFI/Newby Island Recyclery and the harvesting of cover material and use of unapproved, blended ADC materials has been discontinued.

Below are the details of the landfill's compliance history based on the LEA's monthly inspection reports during the last five years:

- 2012-2014 No violations noted.
- 2011 (January) – One violation of Title 27 CCR, section 20921 – Gas Monitoring and Control due to monitoring wells having a methane gas concentration reading exceed five percent by volume in air.
- 2010 (July, October, November, December) – Four violations of Title 27 CCR, section 20921 – Gas Monitoring and Control due to monitoring wells having a methane gas concentration reading exceed five percent by volume in air.

All violations were corrected to the satisfaction of the LEA. Further detail with regard to compliance with 27 CCR, Section 20921 is provided in the Public Comments section below.



Issues regarding odors were discussed with Bay Area Air Quality Management District staff. Department staff understand that the District staff have issued two Notice of Violations on January 6, 2015 for nine odor complaints confirmed in December 2014. The Notices were issued to NISL for failing to comply with Regulation 1, Section 301, which states that the facility may not discharge any air contaminants or other materials that may cause public nuisance.

**Environmental Analysis:**

Under CEQA, the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed revised SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the City of San Jose, Department of Planning, Building, and Code Enforcement, acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The changes that will be authorized by the issuance of the proposed permit include:

1. An increase in maximum elevation from 150 feet mean sea level to 245 feet mean sea level.
2. An increase in design capacity from 50.8 million cubic yards to 57.5 million cubic yards.
3. An extension of the estimated closure date from 2025 to 2041.
4. A decrease in permitted disposal area from 308 acres to 298 acres.

The proposed changes are supported by the following environmental document:

- Draft Environmental Impact Report (EIR) and First Amendment to the Draft EIR, State Clearinghouse No. 2007122011, dated May 2012.

A Draft Environmental Impact Report (EIR), State Clearinghouse No. 2007122011, was circulated for a 45 day comment period from September 22, 2009 to November 5, 2009. This Draft EIR analyzed the following proposed changes:

- Allowance of the maximum height of the active portion of the landfill to be raised to 245 feet on the National Geologic Vertical Datum of 1929 (NGVD29).
- Adding approximately 15.12 million cubic yards to the capacity of the landfill.
- Allow indefinite landfill use as long as capacity remains at the landfill.

The lead agency received numerous comments on the Draft EIR. Working with its environmental consultants, David Powers and Associates, the lead agency prepared responses to all those comments that raised environmental issues. The responses describe the disposition of significant environmental issues raised by the comments and make changes and additions to the Draft EIR in response to those comments. The

comments, responses to comments, resulting changes to the Draft EIR and additional information are all included in a First Amendment to the Draft EIR which was completed and made available to the public on May 24, 2012. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The Final EIR was certified by the City of San Jose Planning Commission on June 6, 2012. The City of Milpitas challenged the EIR in Santa Clara County Superior Court, which upheld the EIR. The City of Milpitas has filed an appeal of that decision. However, the EIR remains effective until a court orders otherwise and as such, CalRecycle, as a responsible agency under CEQA, is required by law to utilize the EIR as it stands and is not permitted to second guess the analysis and conclusions in that document.

The City of San Jose LEA has provided a finding that the proposed revised SWFP is consistent with and supported by the cited environmental document.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the Final Environmental Impact Report, as prepared by the Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed revised SWFP.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed revised SWFP and all of its components and supporting documentation, this staff report, the Final Environmental Impact Report certified by the Lead Agency, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed revised SWFP. The custodian of the Department's administrative record is Dona Sturgess, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

### **Public Comments:**

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on November 6, 2014, at the Embassy Suites, located at 901 E Calaveras Blvd., in the City of Milpitas.

Department staff attended the meeting. The following is staff's summary of the meeting:

The meeting lasted two hours and was attended by approximately 65 people. The meeting began with an operator presentation of the proposed project. The remaining time was allotted for public comment. Approximately half of the attendees offered comments and the majority of which were related to complaints of bad odor. One comment was made regarding the proposed maximum height of the landfill and one comment was made regarding potential health impacts from the landfill including environmentally induced asthma. During the public informational meeting, Department staff received a letter from Thomas C. Williams, Manager of the City of Milpitas, addressed to the LEA and the Department, regarding the proposed revised SWFP, Joint

Technical Document (JTD), and permit application for the NISL. In the letter, dated November 6, 2014, Mr. Williams provides a list of reasons opposing the proposed revised SWFP.

Prior to submitting the proposed permit to the Department, the LEA received approximately 70 written comments in opposition of the project. As of January 29, 2015, the Department has received over 250 written comments and phone calls in opposition of the proposed revised SWFP. All of the written and oral comments received by the Department were replied to via e-mail or phone call, respectively. Written comments are posted on the Department's public website.

Department staff provided an opportunity for public comment during the Department's Monthly Public Meeting held on December 16, 2014 and January 27, 2015.

At the December 16, 2014 meeting, 39 members of the public were in attendance to provide oral comments. One NISL representative spoke.

At the January 27, 2015 meeting, 29 members of the public provided oral comments in opposition to the project. One NISL representative provided remarks.

Below is a summary of the written and oral public comments received for the proposed project during the proposed revised SWFP process and the Department Monthly Public Meetings followed by Department staff's response to those comments:

Comments: Written and oral comments were received from concerned members of the public almost exclusively regarding odor and air quality issues.

Response: The Department is prohibited under California law from regulating or enforcing odor standards at landfills. Assembly Bill 1220, known as the "Solid Waste Disposal Regulatory Reform Act of 1993," (Public Resources Code (PRC) Sections 43100 et seq.) was designed to eliminate regulatory overlap, conflict, and duplication between state agencies and state and local agencies. The Act specified that: "A clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the board and the state water board and regional water boards, or between the board and any other state agency..." (PRC 43101(c)(1)).

The Act further revised the Integrated Waste Management Board's (now the Department's) regulatory authority to expressly remove its authority to promulgate standards that were within the jurisdiction of the Air Board and Air Districts. Specifically, PRC 43020 states that the Department "shall not include [in its regulations] any requirements that are already under the authority of the State Air Resources Board for the prevention of air pollution or of the state water board for the prevention of water pollution." Moreover, PRC 43021 states that the Department's regulations "shall not include aspects of solid waste handling or disposal which are solely of local concern or

which are within the jurisdiction of the State Air Resources Board, air pollution control districts and air quality management districts...”

Odor is defined under in those sections of the Health and Safety Code (HSC) under Air Board jurisdiction as a type of air contaminant (HSC 39013).<sup>1</sup> HSC 41700<sup>2</sup> states that prevention of the discharge of air contaminants is within the jurisdiction and authority of the Air Boards and Air Districts and therefore, the Department is prohibited from promulgating regulations and standards regarding the control of odors at solid waste facilities (with the exception of agricultural operations and compost facilities for which the Department has been given express authority in HSC 41705<sup>3</sup> and PRC 43209.1<sup>4</sup>).

Some comments have cited to a section in 27 CCR regarding ADC that uses the word “odor” and conclude that the Department therefore has associated regulatory authority to address this issue. However, this section must be read in context with other

---

<sup>1</sup> "Air contaminant" or "air pollutant" means any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof.

<sup>2</sup> (a) Except as otherwise provided in Section 41705, a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property. (b) (1) A district may adopt a rule or regulation, consistent with protecting the public's comfort, repose, health, and safety, and not causing injury, detriment, nuisance, or annoyance, that ensures district staff and resources are not used to investigate complaints determined to be repeated and unsubstantiated, alleging a nuisance odor violation of subdivision (a). (2) If a district adopts a rule or regulation pursuant to paragraph (1), the district shall submit the rule or regulation to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources within 30 days of adopting the rule or regulation. (c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

<sup>3</sup> (a) Section 41700 does not apply to odors emanating from any of the following: (1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals. (2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, if the odors emanate directly from the compost facility or operations. (3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually. (b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency. (c) This section shall become inoperative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 of the Public Resources Code on or prior to that date.

<sup>4</sup> (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part. (b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate. (c) On or before April 1, 2003, the board shall adopt and submit to the Office of Administrative Law, pursuant to Section 11346.2 of the Government Code, regulations governing the operation of organic composting sites that include, but are not limited to, any of the following: (1) Odor management and threshold levels. (2) Complaint investigation and response procedures. (3) Enforcement tools. (d) This section shall become inoperative on April 1, 2003, unless the board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) on or prior to that date.



applicable laws. The Administrative Procedure Act provides that a state agency may not adopt a regulation that alters, amends or enlarges the scope of the power conferred upon it. Therefore, any CalRecycle regulation must be read in concert with the statutes that provide its regulatory authority.

Based upon the statutes cited above, CalRecycle has no authority to adopt standards to control odors from landfills because that is within the jurisdiction of the Air Board and Districts. One of the purposes of cover (including ADC) is to prevent odors and so that term was included in the Department's regulations to ensure an accurate description of what cover is designed to accomplish, but in doing so, the Department was not establishing a standard that it could enforce because that would be enlarging the scope of the power conferred on it. The Initial Statement of Reasons for this regulatory section in fact states this, expressly noting that, "Odor issues at solid waste landfills are the jurisdiction of the State Air Resources Board and air pollution control districts or air quality management district." Likewise, in response to a comment during the rulemaking for these regulations stating that Enforcement Agencies should have ADC odor enforcement authority and an ADC odor performance standard, the Integrated Waste Management Board (now the Department) responded that "the local air districts have jurisdiction as per AB 1220."

Comments: Written and oral public comments were received regarding concerns with the increase in maximum elevation to the NISL.

Response: Impacts from landfill height are analyzed in the EIR and no significant impacts associated with the height increase were found.

CalRecycle staff reviewed the slope stability analyses as part of the review of the preliminary closure and postclosure maintenance plans for the proposed expansion. The geotechnical report indicated that the landfill is stable and meets regulatory requirements under both static and dynamic conditions, including locations where liquefaction may occur during a seismic event. The geotechnical report included recommendations to address the potential for liquefaction. The operator has begun implementation and continues to implement the measures to reduce the potential threat of liquefaction.

Comments: Written and oral public comments were received claiming that the CEQA for the project is inadequate.

Response: As detailed in the Environmental Analysis section above, Department staff has reviewed the environmental documentation and has determined that the Final EIR, as prepared by the Lead Agency, is adequate for the Department's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department. In addition, under the circumstances, the Department must use the Lead Agency's CEQA documents since the Department has no authority

to prepare a subsequent or supplemental environmental document, pursuant to 14 CCR, Sections 15162 and 15163 respectively, or assume the role of Lead Agency, pursuant to 14 CCR, Section 15052, for its consideration of the proposed revised SWFP. None of the comments provided any substantial evidence to support an alternate conclusion. Although the EIR has been challenged in court, it remains effective until a court says otherwise and the Department, as a CEQA responsible agency, is required by law to follow it.

Comments: Written and oral public comments were received claiming that the NISL is causing a nuisance to the surrounding community as a result of the odors and that the LEA and Department have authority to enforce nuisance requirements.

Response: While these comments correctly note that the LEA and Department have authority in regulation to address nuisance issues, to the extent a nuisance is caused by odor, the regulations must be read within the proper context as described above in the “Odor” section. The authority to enforce nuisance is limited by the fact that the LEA and Department are prohibited by law from regulating landfill odor. The nuisance regulation cannot be interpreted to grant authority that a statute explicitly denies.

Comments: Written comments were received indicating that the application for the permit revision and the proposed revised SWFP are inadequate. Specific comments focus on the suggested changes to the proposed permit’s key design parameters, the mitigating monitoring and reporting program, the terms and conditions of the SWFP, and a lack of local land use requirements in the SWFP. Some commenters stated that the proposed revised SWFP was inadequate since the SWFP did not identify requirements and/or limitations imposed by a local land use permit.

Response: Department staff has made the determination that all of the required submittals and findings required by 27 CCR, Section 21685, have been provided. An LEA is responsible for permitting solid waste handling activities within their jurisdiction as provided in PRC, Section 44001 et. seq (permitting requirements). The LEA’s authority is limited by statutes and regulations under the Integrated Waste Management Act, Division 30 of the PRC, 27 CCR, and 14 CCR. The LEA and Department do not have authority to enforce local land use requirements and permits or other requirements imposed by another agency. Furthermore, the LEA is only responsible for any specific mitigation monitoring and reporting program requirements which are within their powers and authority as the LEA under the Integrated Waste Management Act. All of the mitigation measures within the authority of the LEA are enforced through the proposed permit.

Comments: Written comments were received indicating that the JTD is incomplete for the purposes of the proposed revised SWFP and include suggested changes to the JTD.

Response: Department staff has made the determination that all of the required submittals and findings required by 27 CCR, Section 21685, including the JTD.

### Landfill Gas Monitoring

Comments: Written and oral public comments were received with regard to the violations of 27 CCR, section 20921 – Gas Monitoring and Control, and NISL’s compliance status with this regulation.

Response: NISL had at one time a perimeter landfill gas monitoring network consisting of 20 wells with monitoring probes. Because NISL is surrounded by tidal marshlands, sloughs, and creeks that are inaccessible for well construction and monitoring, 17 of the wells were constructed along a levy road directly abutting the landfill. Due to measurements in some of the monitoring probes exceeding the regulatory limit for methane, a landfill gas remediation plan was approved for the NISL in July 2010. They included 22 new vertical gas extraction wells installed along the northern boundary of the facility. In 2011, NISL proposed an alternative monitoring program that recognized the effects of a naturally occurring barrier system to landfill gas migration created by shallow groundwater, surface water, and tidal marshlands surrounding the site. The barrier prohibits the subsurface migration of landfill gas and there was no potential for the creation of adverse impacts to public health and safety and the environment by discontinuing compliance monitoring in location adjacent to the barrier. Under the alternative plan, three monitoring wells along the southeast D-shaped parcel in proximity to the operations buildings and scales are monitored for regulatory compliance. The monitoring wells in other areas along the perimeter of the NISL are not required to be monitored for regulatory compliance, but continue to be monitored for safety and to verify the performance of the landfill gas control system. The revised monitoring plan was approved by the LEA and the Department concurred in that determination in 2011. All previously noted violations were corrected to the satisfaction of the LEA. Since January 2011, NISL has not received a violation of 27 CCR, Section 20921.

A petition, entitled “Stop Newby Island Landfill Expansion--garbage can't be put above people!” was posted on the Change.org website. As of January 29, 2015 the petition has been “signed” by 15,655 individuals.

SAN JOSE  
THE LETITIA BUILDING  
70 S FIRST STREET  
SAN JOSE CA 95113-2406  
T 408.286.9800  
F 408.998.4790

PALO ALTO  
200 PAGE MILL ROAD  
SUITE 200  
PALO ALTO CA 94306-2062  
T 650.804.7600  
F 650.804.7630



**HOPKINS & CARLEY**  
A LAW CORPORATION

MAILING ADDRESS  
PO BOX 1469  
SAN JOSE CA 95109-1469  
hopkinscarley.com

January 26, 2015

JOAN R. GALLO  
jgallo@hopkinscarley.com  
408-299-1496  
Fax 408-938-6227

Sylvia Do, Division Manager  
City of San Jose  
Planning Division  
200 E. Santa Clara Street, 3rd Floor  
San Jose, CA 95113

**Re: Continuation Request of Planned Development Permit PD14-014**

Dear Ms. Do:

On behalf of the Applicants, International Disposal Corporation of California and Browning-Ferris of California, Inc., I am requesting a continuance of the hearing on the appeal of PD14-014. Under the unique circumstances that two Commissioners must abstain from participation, it seems appropriate to continue the hearing until the new Commissioner is seated. I believe the first meeting after the scheduled appointment would be March 11<sup>th</sup>.

Thank you for your assistance.

Sincerely,

HOPKINS & CARLEY  
A Law Corporation

Joan R. Gallo

JRG/tsa